



Police Department
City of Emeryville
2449 Powell Street
Emeryville, CA 94608



January 10, 2019

Via email only

Lisa Fernandez
2 Jack London Square
Oakland, CA. 94607
(510) 874-0139
lisa.fernandez@foxtv.com

Re: PRA request email dated December 20, 2018, effective January 1, 2019 and subsequent email request dated January 7, 2019

Dear Ms. Fernandez,

Pursuant to Government Code section 6250, et seq., I write to respond to your email received by the City of Emeryville, on December 20, 2018, in which you request records involving, "The names and reports of officers involved in conduct, soon to be made public as a result of SB 1421." The requests contained in the email were made in anticipation of SB 1421 becoming law on Jan. 1, 2019, and therefore, you indicated "The 10-day period [in which the City generally responds] can start then."

In your email, you divided your requests into two separate time periods, records (including video) from January 1, 2017, through the present (January 1, 2019), and records (including video) from January 1, 2014, through December 31, 2016. For purposes of responding to your request, the City will consider and review documents from January 1, 2014, through the present (January 1, 2019).

Below, I quote your requests for the records you are seeking in *italics*, with the City's response to that request following in **bold**.

1. *Records relating to the report, investigation, or findings of an incident involving the discharge of a firearm at a person by a peace officer or custodial officer.* **From January 1, 2014, through the present, the City has located the following as responsive: (1) records related to EPD Report Numbers 1502-0259 & 15-001 involving an officer-involved-shooting on February 3, 2015, at 3838 Hollis Street, Emeryville, CA (Home Depot) with EPD Officers Warren Williams and Michelle Shepherd; and (2) records related to EPD Report Numbers [1709-2151] involving an officer-involved-shooting on September 27, 2017, at the Powell Exit on I-80 West with Fairfield Police Department Sergeant B. Pucci, Sergeant K. Rombach, Officer J. Divine, Officer E. Aagaard, Officer S.**

Rahtery, Officer J. Sehr, and Richmond Police Department Sergeant C. Llamas, Detective A. Diaz, Sergeant D. Decious, Detective M Ricchiuto, Officer O. Guzman, Officer C. Tagorda, Officer B. Mendler.

2. *Records relating to the report, investigation or findings of an incident in which the use of force by a peace officer or custodial officer against a person results in death or great bodily injury.* SB 1421 does not define “great bodily injury.” Therefore, in responding to your request, the City defines “great bodily injury” to mean “a significant or substantial physical injury”, which is separate and distinct from serious bodily injury, and which, for purposes of this response, constitutes a more severe injury than serious bodily injury. (See e.g., *People v. Taylor* (2004) 118 Cal.App.4th 11, 24-25.) From January 1, 2014, through the present, the City refers you to the City’s response to Request No. 1.
3. Records relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public. **The City has no such records.**
4. Records relating to an incident in which a sustained finding of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction of evidence or falsifying or concealing of evidence. **From January 1, 2014, through the present, the City has located the following as responsive: records related to IA 14-01 involving former EPD Officer Josh Patterson.**
5. Provide how many complaints from the public about police misconduct regarding the items covered in SB 1421 have you gotten in this time period. (Back to Jan. 1, 2017 first, and then back to Jan. 1, 2014) **The City does not maintain any record that tracks the number of complaints received from the public regarding alleged misconduct subject to public disclosure under Penal Code section 832.7(b)(1), and therefore, there are no records responsive to your request. The City further states that complaints from the public related to police officer misconduct as described in Penal Code section 832.7(b)(1)(A)-(B) that have been sustained would be disclosed in response to your prior requests above, and you will have the records necessary to compile the answer responsive to this request.**
6. Provide how many department-initiated internal affairs investigations regarding items covered in SB 1421 have you conducted in this time period? **The City does not maintain any record that tracks the number of department-initiated affairs investigations subject to public disclosure under Penal Code section 832.7(b)(1), and therefore, there are no records responsive to your request. The City further states that internal affairs investigations (whether department initiated or not) related to police officer misconduct as described in Penal Code section 832.7(b)(1)(A)-(B) would be disclosed in response to your prior requests above, and you will have the records necessary to compile the answer responsive to this request.**
7. Provide how many claims and lawsuits have you received and settled regarding the items covered in SB 1421 in the same time period? **With respect to the incidents identified in this letter in response to your public records act request, the City received claims from the heirs of Yvette Henderson and settled the action, *I.A., et al. v. City of Emeryville, et al.*, United States**

District Court for the Northern District of California Case No. 4:15-cv-04973-DMR, both of which related to the incident described in EPD Police Report Nos. 1502-0259 & 15-001.

Except for records related to EPD Number [1709-2151], the City will make records identified in responses above to requests numbered 1, 2 and 4 available for inspection by appointment after March 1, 2019. At this time, the City anticipates that the records will be too voluminous to email. Please note that pursuant to Penal Code section 832.7 (b)(5), the City reserves the right to redact: personal data or information, names of complainants and witnesses, confidential medical, financial or other such information, information in which disclosure would pose a significant danger to an individual, and other information in which the public's interest is served by non-disclosure. Please contact Captain Oliver Collins at ocollins@emeryville.org to schedule the appointment.

With respect to EPD Number [1709-2151], pursuant to Penal Code section 832.7(b)(7)(A)(i)-(iii), the City will be delaying disclosure of the records. This is a multi-jurisdictional investigation, in which Emeryville Police Department is serving as the lead investigator in the criminal investigation. No Emeryville police officer was involved in the incident. At this time, due to the complexity of a multi-jurisdiction investigation, as well as the complexity of the events that occurred leading up to the incident, the police report has not been completed and is still in draft format. Further investigation may be required to finalize the police report. Public disclosure of the incomplete draft police report could jeopardize the integrity of the investigation by revealing witnesses, their statements, and the officers' analyses. At this time, the City estimates that the records related to EPD Number [1709-2151] may be available for disclosure on or around March 27, 2019 but reserves the right to further delay disclosure if extraordinary circumstances warrant continued delay.

Sincerely,

A handwritten signature in blue ink, appearing to read "O. Collins #379".

Oliver Collins, Captain
Emeryville Police Department

cc: Michael Guina, City Attorney
Jennifer Tejada, Police Chief